

No. 14634

In the
United States Court of Appeals
For the Ninth Circuit

ARTHUR PARISETTE CLARK,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Petition for Rehearing

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FILED

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Comes now the appellant, by his attorney, and files this his Petition for Rehearing of Judgment entered by the Court on June 20, 1956, affirming the judgment of the court below.

Appellant reserves his argued position as to each of the points of appeal, but in this petition addresses himself solely to certain features of the decision wherein he believes the Court may be convinced its opinion is incorrect.

FAILURE OF PROOF OF GUILT

It is appellant's position that the uncontradicted evidence shows that he was not put through the army induction ceremony mandatorily required by the law, that the record shows this, and that this showing rebuts any applicable presumption of "regularity."

The slip opinion (pp. 10-11) proceeds on the assumption that the only criterion for deciding this point is whether the selectee had an opportunity to take the "step forward" and concluded that appellant had not met the burden of overcoming the presumption of regularity of official action.

The opinion has ignored

- (a) the mandate of the applicable regulation (S.R. 615-180-1) which requires that a recalcitrant selectee be given *two* opportunities to step forward, the second being preceded by a warning of the penalty, and
- (b) the fact that the *only* evidence on the subject (Ex. 178U and 179U) shows that there was *no attempt* to give the selectee a second chance and no attempt to warn him of the penalty.

It is submitted that this undisputed evidence presents fatal failure to follow the law and completely rebuts the presumption of regularity. Also, see affidavit of counsel attached.

Comparison of the "correct" induction recording set forth in this affidavit with the evidence in appelle-

lant's record (Ex. 178U and 179U) shows the fatal variance.

Wherefore, upon the foregoing ground, and for other reasons, appearing in appellant's brief, it is respectfully urged that a rehearing be granted in this matter, and that the mandate of this Court be stayed pending the disposition of this petition.

J. B. TIETZ

Attorney for Appellant.

AFFIDAVIT OF COUNSEL

UNITED STATES OF AMERICA)
STATE OF CALIFORNIA) ss.
COUNTY OF LOS ANGELES)

J. B. TIETZ, being first duly sworn, deposes that the following is a true and correct and complete recording of the refusal of a selectee to submit to induction, as shown by the file of Dick Lee Evans, Selective Service No. 4-115-33-228:

“12/6/55 4-115-33-228

“I Dick Evans, was given two chances to be inducted in the Armed Service's and I refused because of my religious belief. I am apposed (sic) to any military training.

“/s/ Dick Evans

“Witnessed:

/s/ Hoyt J. Harlick

YNC U.S. Navy

/s/ Samuel G. Wotherspoon

1st Lt., Inf.

“A TRUE COPY

Local Board No. 115
Los Angeles County
December 6, 1955
11214 S. Brookshire Ave.
Downey, California”

J. B. TIETZ

Sworn to before me and subscribed in my presence this 16th day of July, 1956

EDWARD RAIDEN

Notary Public in and for said County and State.